

CARLSMITH BALL LLP

DAVID LEDGER

Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Defendant  
Sanko Bussan Co., Ltd.

**FILED**  
DISTRICT COURT OF GUAM

NOV 17 2005

MARY L.M. MORAN  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

MARUWA SHOKAI GUAM, INC.,

Plaintiff,

vs.

M/V KANA-MARU NO. 1, et al.,

Defendant.

CIVIL CASE NO. 00-00029

**PROOF OF ACTUAL SERVICE OF**

***NOTICE OF REPOSSESSION OF  
VESSEL AND REQUEST FOR AN  
ORDER TRANSFERRING OWNERSHIP***

**ON COUNSEL OF RECORD AND  
TOSHIHIKO IKEMA; EXHIBIT A  
DECLARATION OF SERVICE**

M/V KANA-MARU NO. 1, et al.,

Counterclaim-Plaintiff,

vs.

MARUWA SHOKAI GUAM, INC.

Counterclaim-Defendant,

and

SANKO BUSSAN CO., LTD.

Claimant/Plaintiff-in-  
Intervention.

I. Background

On November 7, 2005, Sanko Bussan filed its *Notice Of Repossession Of Vessel And Request For An Order Transferring Ownership* (the "Notice Of Repossession").

On November 14, 2005, the Court entered an Order stating that the Declaration of Service filed with the Notice Of Repossession is deficient because it did not provide proof that all interested parties had *actually* been served.

II. Proof of actual service on all counsel of record

Sanko Bussan hereby corrects the deficiency noted by the Court by submission of proof of *actual* service on the following counsel of record for Plaintiff Maruwa Shokai Guam, Inc. and vessel owner Toshihiko Ikema:

Counsel of record (and trial counsel) for Maruwa Shokai Guam, Inc.

Steven A. Zamsky, Esq.  
Zamsky Law Firm  
Suite 805, GCIC Building  
414 West Soledad Avenue  
Hagåtña, Guam 96910

Counsel of record (and trial counsel) for Toshihiko Ikema

Daniel J. Berman, Esq.  
Berman O'Connor Mann & Shklov  
Suite 503, Bank of Guam Building  
111 Chalan Santo Papa  
Hagåtña, Guam 96910.

Attached hereto as Exhibit A is proof of *actual* service on both above-named counsels of record. In particular, each law office affixed a "Received" stamp on Sanko Bussan's proof of service copy of its Notice Of Repossession. The Zamsky Law Firm was served at 3:00 p.m. on November 7, 2005, and Berman O'Connor at another time the same day.

III. Proof of actual service on Toshihiko Ikema

**DECLARATION OF DAVID LEDGER**

1. I am counsel of record and trial counsel for plaintiff in intervention Sanko Bussan.

2. I am a United States citizen and over the age of twenty one.

3. I am a member in good standing of the Guam Bar and am admitted to practice in this United States District Court.


4. On November 7, 2005, Sanko Bussan's Notice of Repossession was served on vessel owner Toshihiko Ikema by first class United States mail to the following address: 110 Aza Maesatozoe, Irabu-cho, Miyakojima, Okinawa. This is the same address at which Mr. Ikema was actually served with Sanko Bussan's notice of default and demand for payment. (See Exhibit C to Sanko Bussan's Notice Of Repossession, filed November 7, 2005).

5. On November 17, 2005, Sanko Bussan's Notice of Repossession was again served on Toshihiko Ikema at the same address stated above by way of first class, certified mail, and by DHL courier service.

6. Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 17, 2005 at Hagåtña, Guam.

CARLSMITH BALL LLP

  
\_\_\_\_\_  
DAVID LEDGER  
Attorneys for Defendant  
Sanko Bussan Co., Ltd.

# EXHIBIT

## "A"

CARLSMITH BALL LLP

DAVID LEDGER  
Bank of Hawaii Bldg., Suite 401  
134 West Soledad Avenue, P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Defendant  
Sanko Bussan Co., Ltd.

**FILED**  
DISTRICT COURT OF GUAM

NOV - 7 2005

MARY L.M. MORAN  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

MARUWA SHOKAI GUAM, INC.,

Plaintiff,

vs.

M/V KANA-MARU NO. 1, et al.,

Defendant.

CIVIL CASE NO. 00-00029

**NOTICE OF REPOSSESSION OF  
VESSEL UNDER STIPULATED  
JUDGMENT; REQUEST FOR AN  
ORDER TO TRANSFER OWNERSHIP  
OF VESSEL TO PLAINTIFF IN  
INTERVENTION, SANKO BUSSAN  
CO., LTD.; EXHIBITS A-C;  
DECLARATION OF SERVICE**

M/V KANA-MARU NO. 1, et al.,

Counterclaim-Plaintiff,

vs.

MARUWA SHOKAI GUAM, INC.

Counterclaim-Defendant,

and

SANKO BUSSAN CO., LTD.

Claimant/Plaintiff-in-  
Intervention.

RECEIVED BY

NOV 07 2005  
3:00 PM  
ZAMSKY LAW FIRM

**RECEIVED**

NOV 07 2005

BERMAN O'CONNOR  
MANN & SHKLOV

1. Background

Plaintiff Maruwa Shokai filed this admiralty case in 2000. Sanko Bussan intervened to assert a maritime lien on the KANA MARU No. 1 (the "vessel"), as well as other *in personam* claims against Toshihiko Ikema, the vessel owner. After a trial on the underlying action brought by Maruwa Shokai, District Judge Alex R. Munson presiding, Sanko Bussan's *in rem* maritime lien and *in personam* claim against Ikema were adjudicated by way of a Stipulated Judgment and Order filed June 12, 2001 (the "Judgment"). That Judgment is attached as Exhibit A. Among other things, the Judgment provides for continuing jurisdiction by the Court for purposes of enforcing the Judgment. See Exh. A, p. 5, paragraph 4.

Sanko Bussan's *in rem* judgment on the maritime lien is for \$460,332.80, Id. at p. 3, paragraph 2, the *in personam* judgment is for \$118,742.20. Id. at p. 4, paragraph b..

2. Current status

Ikema has defaulted on his obligations to pay the *in rem* judgment against the vessel for the maritime lien and the *in personam* judgment against him personally. In accordance with the terms of the Judgment, Sanko Bussan gave written notice of the default ("Notice"), and demanded that Ikema cure the default by payment or otherwise, for example, by proposing a payment schedule. Sanko Bussan's Notice of default is attached as Exh. B, together with an English translation. Proof of delivery of the Notice to Ikema is attached as Exh. C, also with an English translation.

Ikema was served with the Notice on October 20, 2005. Ikema has not cured the default by payment or otherwise, or in any other way responded to the Notice or Sanko Bussan's demand, within the fifteen (15) days as specified in the Judgment, see Exh. A at p. 5, paragraph 4, and in the Notice. See Exhibit B.

3. Action taken


The Judgment authorizes Sanko Bussan to use self-help to repossess the vessel. See Exh. A, p. 4, paragraph 4. On or about November 7, 2005, Sanko Bussan will use self-help to repossess the vessel at Guam, and thereafter operate the vessel with a new crew.

4. Court action requested

The Judgment provides that, subsequent to repossession of the vessel by Sanko Bussan, the Court shall, in accordance with the Court's continuing jurisdiction, determine ownership and legal title to the vessel. Sanko Bussan hereby respectfully requests the Court to file the (Proposed) Order, lodged concurrently herewith, thereby deeming Sanko Bussan as legal owner of the vessel

DATED: Hagåtña, Guam, November 7, 2005.

CARLSMITH BALL LLP

  
\_\_\_\_\_  
DAVID LEDGER  
Attorneys for Defendant  
Sanko Bussan Co., Ltd.

# **EXHIBIT**

## **"A"**

CARLSMITH BALL LLP

DAVID P. LEDGER  
STACY S. FUKUHARA  
134 West Soledad Avenue  
Bank of Hawaii Bldg., Suite 401  
P.O. Box BF  
Hagåtña, Guam 96932-5027  
Tel. No. (671) 472-6813

Attorneys for Sanko Bussan Co., Ltd.

FILED  
DISTRICT COURT OF GUAM

JUN 12 2001

MARY LIL MORGAN  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

MARUWA SHOKAI GUAM, INC.,  
Plaintiff,

vs.

M/V KANA-MARU NO. 1, et al.,  
Defendants.

M/V KANA-MARU NO. 1, et al.,  
Counterclaim-Plaintiff,

vs.

MARUWA SHOKAI GUAM, INC.,  
Counterclaim-Defendant,

and

SANKO BUSSAN CO., LTD.,  
Claimant/Plaintiff-in-Intervention.

CIVIL CASE NO. 00-00029

STIPULATED JUDGMENT AND  
ORDER

3125495.1.053394-00001

R E G I S T E R E D  
CARLSMITH BALL

EXHIBIT A

District Court of Guam Civil Case No. 00-00029  
**STIPULATED JUDGMENT AND ORDER**  
 Page 2

M/V KANA-MARU NO. 1 and TOSHIHIKO )  
 IKEMA, )  
 )  
 Third-Party Plaintiffs, )  
 )  
 vs. )  
 )  
 MARUWA SHOKAI, LTD., )  
 )  
 Third-Party Defendants. )  
 \_\_\_\_\_ )

Plaintiff-in-Intervention SANKO BUSSAN CO., LTD. ("Sanko Bussan") and  
 Defendants, Counterclaim-Plaintiff, and Third Party Plaintiffs M/V KANA-MARU NO. 1 and  
 TOSHIHIKO IKEMA, by and through their respective counsel, stipulate and agree as follows:

1. Sanko Bussan has a maritime lien for necessities (the "maritime lien"), as  
 that term is defined under United States general maritime law, against the vessel M/V Kana Maru  
 No. 1 (the "Vessel") in the amount of \$460,332.80. The lien consists of:

a. Shipyard refurbishment work performed in Okinawa, the agreed  
 value of which is ¥55,238,904, all of which is established and proven by exhibits admitted into  
 evidence at the trial of this matter as Sanko Bussan Trial Exhibits No.1-79, 1-81 to 88, 1-91, 1-98  
 to 1-100, 1-102 to 1-106, 1-108 to 1-118, 2-1, 2-3, 2-5 to 2-16, 2-18 to 2-19, 2-24 to 2-32, 5-1 to  
 5-6 and 5-8. The Vessel has made four payments in the amount of ¥6,323,530 towards said  
 debt, and therefore owes ¥48,915,374 or \$404,259.28 at U.S. \$1 equals Japanese ¥121.

3125495.1.053394-00001

District Court of Guam Civil Case No. 00-00029  
**STIPULATED JUDGMENT AND ORDER**  
Page 3

b. Necessaries for the Vessel while it was under arrest in Guam, the agreed value of which is \$56,073.52, all of which is established and proven by exhibits admitted into evidence at the trial of this matter as Sanko Bussan Trial Exhibits 1-1, 1-2 and 7-1 to 7-38.

2. Sanko Bussan is entitled to judgment on its maritime lien in the amount of \$460,332.80, and said judgment is hereby entered against Ikema *in personam* and the Vessel *in rem*.

3. Sanko Bussan may execute on the maritime lien pursuant to applicable law, including Rule E, Supp. Rules For Certain Admiralty and Maritime Claims and Local Admiralty Rule C; provided, however, that in consideration of Toshihiko Ikema's ("Ikema") performance of the points set forth below in a.- e., Sanko Bussan will not execute on said maritime lien:

a. Ikema will pay off the maritime lien in accordance with that certain agreement between Sanko Bussan and Ikema, said agreement requiring Ikema to pay an amount toward reducing the maritime lien upon completion of each profitable fishing voyage until said maritime lien is fully paid. The amount Ikema must pay upon completion of each profitable fishing voyage will be a function of the amount of fish caught, market price for the fish, voyage expenses and, ultimately, the amount of profit earned for each said voyage which, in each instance, shall be agreed upon between Ikema and Sanko Bussan according to the usual accounting method to determine same, all as testified to at the trial by Takeshi Umazume, both

District Court of Guam Civil Case No. 00-00029  
**STIPULATED JUDGMENT AND ORDER**  
Page 4

parties being required to use the utmost good faith and fair dealing in agreeing upon said amount of profit;

b. Ikema agrees to have judgment (the "Judgment") entered against him *in personam*, and the Vessel *in rem*, in favor of Sanko Bussan, in the amount of \$118,742.20 for certain cash advances paid to and on behalf of Ikema, as of March 19, 2001, by Sanko Bussan, and said judgment is hereby entered;

c. Ikema will pay off the Judgment in accordance with that certain agreement between Sanko Bussan and Ikema, said agreement requiring Ikema to pay an amount toward reducing the Judgment upon completion of each profitable fishing voyage until said Judgment is fully paid. The amount Ikema must pay upon completion of each profitable fishing voyage will be a function of the amount of fish caught, market price for the fish, voyage expenses and, ultimately, the amount of profit earned for each said voyage which, in each instance, shall be agreed upon between Ikema and Sanko Bussan according to the usual accounting method to determine same, all as testified to at the trial by Takeshi Umazume, both parties being required to use the utmost good faith and fair dealing in agreeing upon said amount of profit;

d. The Vessel will remain under the agency of Sanko Bussan until the maritime lien for necessities and Judgment are paid in full; provided, however, that Sanko Bussan performs all of its obligations under said agency agreement; and

3125495.1.053394-00001

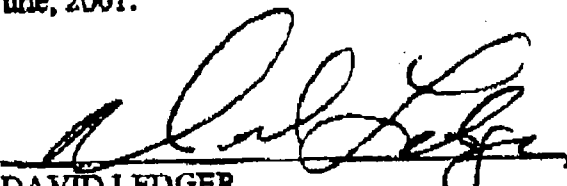
District Court of Guam Civil Case No. 00-00029  
**STIPULATED JUDGMENT AND ORDER**  
Page 5

e. Ikema will neither purchase, nor authorize the purchase of, any supplies, equipment, bunkers, repairs, tackle, bait, services or any other item, commodity or necessary by or for the Vessel, without first obtaining Sanko Bussan's written authority and consent to do so.

4. The parties agree that the Court will retain continuing jurisdiction of this action for purposes of enforcing the terms of this Stipulated Judgment and Order; provided, however, the parties agree that should Ikema default on any obligation required by this Stipulated Judgment and Order, and after prompt written notice personally delivered fail to cure said default within a reasonable time in the circumstances, in any event not to exceed 15 days after said notice, Sanko Bussan may use self-help to take possession of the Vessel; provided, further, however, that subsequent ownership and legal title to the Vessel shall be determined in accordance with Rule E, Supp. Rules For Certain Admiralty and Maritime Claims and Local Admiralty Rule C, or as otherwise ordered by the Court

Dated this 12 day of June, 2001.

CARLSMITH BALL LLP

  
DAVID LEDGER  
Attorneys for Sanko Bussan Co., Ltd.

//  
//  
//  
//

3125495.1.053394-00001

District Court of Guam Civil Case No. 00-00029  
**STIPULATED JUDGMENT AND ORDER**  
Page 6

Dated this 11<sup>th</sup> day of June, 2001

BERMAN O'CONNOR & MANN

*Daniel J. Berman*  
DANIEL J. BERMAN

Attorneys for M/V Kana Maru No. 1  
and Toshitiko Ikema

APPROVED AND SO ORDERED this 12<sup>TH</sup> day of JUNE, 2001.

*Alex R. Munson*  
THE HONORABLE ALEX R. MUNSON  
United States District Court Judge

Notice is hereby given that this document was  
entered on the docket on 6/13/01.  
No separate notice of entry on the docket will  
be issued by this Court.

Mary L. M. Moran  
Clerk, District Court of Guam

By: *M. Moran* 6/13/01  
Deputy Clerk Date

# **EXHIBIT**

## **"B"**

謹啓 時下益々ご清祥のこととお慶び申  
し上げます。

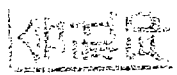
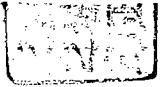
さて、貴殿が所有されている、第一香奈  
丸の整備・点検、グアムにおける水揚げお  
よび積込等に関して平成十一年十月一日か  
ら平成十七年十月十五日までの間、貴殿の  
ため、立替又は負担した費用の未清算合計  
額が、金八三八五万九五九四円となってお  
ります。何度かお話し合いをさせていただ  
きましたが、誠意ある回答をいただけてお  
りません。

つきましては、本状到着の日より、十四  
日以内に、当社宛て持参又は送金してお支  
払い下さるか、同日までに弊社にとり受諾  
できるご返済計画を提出していただきたく  
お願いいたします。

もし、期限内にお支払いは誠意のあ  
るご回答をいただけない場合は、不本意で  
はありますが、法的手続きもやむを得ない  
事をご理解願います。

謹白

EXHIBIT B



平成一七年一〇月一七日

沖縄県那覇市おもろまち二丁目五番七号

三高物産株式会社

代表取締役 馬詰 修

沖縄県宮古島市伊良部町字前里添百十番地

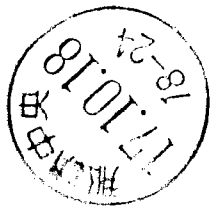
第一香奈丸

池間 敏彦 殿

この郵便物は平成一七年拾月拾八日  
留内容証明郵便物として差し出したことを  
証明します

29722

那覇中央郵便局長



( CONTENTS - CERTIFIED MAIL ) 1<sup>st</sup> page

\*\*\*Mailing seal is affixed on October 18, 2005

With regards to the fishing vessel operation cost like maintenance, inspection, fish offloading and provisions for your owned Kana Maru #1, please be informed that there are outstanding amount as JPY83,859,594 which was paid temporarily by our company for you from October 1, 1999 to October 15, 2005. Although we talked the matter together several times, we have never got sincere response from you.

We would like you to pay the amount in cash or remit to our company in 14 days after you received this mail. Or, we would like you to submit payment schedule which is acceptable for our company on and before that day mentioned above.

Unless you pay the outstanding amount, or you give sincere response by the due date, we regret but we shall be forced to place the matter in the hands of our solicitors. Please understand about it.



2<sup>nd</sup> page

\*\*\*Company seal of sender and mailing seal are affixed

October 17, 2005

(Sender)

President director

Osamu Umazume

Sanko Bussan Co., Ltd.

2-5-7 Omoromachi, Naha, Okinawa

(Recipient)

Mr. Toshihiko Ikema

Owner of Kana Maru #1

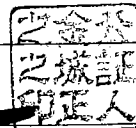
110 Aza-Maesatozoe, Irabu-cho, Miyakojima, Okinawa

I hereby certify that this mail was sent as registered contents-certified mail on October 18, 2005 under confirmation no. 29722.

Postmaster of Naha Central Post office \*\*\*Mailing seal is affixed on October 18, 2005

This is the translation of attached letter mailed on October 18<sup>th</sup> 2005,

1	平成 17 年第 188 号
2	認 証
3	嘱託人馬詰剛は、本職の面前で添付書面に署名押印
4	した。
5	
6	
7	よってこれを認証する。
8	平成 17 年 10 月 24 日本職役場において
9	沖縄県那覇市泉崎一丁目 4 番 10 号
10	那覇地方法務局所属
11	公証人 金城正之
12	
13	
14	
15	
16	
17	
18	
19	
20	



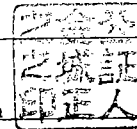
Registered No. 1 8 8

NOTARIAL CERTIFICATE

This is to certify that TSUYOSHI UMAZUME has  
affixed his signature and seal in my very presence  
to the attached document.

Dated this 24th day of October 2005

*Masayuki Kinjo*



MASAYUKI KINJO

Notary

4-10 1 Chome Izumizaki

Naha City Okinawa Japan

Naha Legal Affairs Bureau

公証人役場

# **EXHIBIT**

## **"C"**

**Postal Delivery Certificate**

**Name of Receiver : Toshihiko Ikema**

**Receiving Number : 199-17-29722-3**

**This is to certify that above postal good were delivered on  
October 20, 2005.**

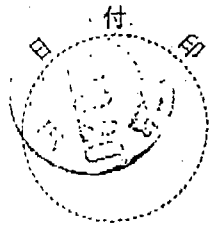
**Irabu Postal Service, Naha Prefecture**

**EXHIBIT C**

## Postal DELIVERY Certificate



## 郵便物配達証明書

受取人の 氏 名	池間 敏彦 様
引受番号	199-17-29722-3 号
<p>上記の郵便物は、17年 10月 20 日 配達したのでこれを証明します。</p> <p>都府県 郵便局 沖縄 伊良部</p> 	

ユ07370 (16-TAI)

再生紙使用

**DECLARATION OF SERVICE**

I, DAVID LEDGER, hereby declare under penalty of perjury of the laws of the United States that on November 7, 2005, I will cause to be served, via hand delivery, a copy of the NOTICE OF REPOSSESSION OF VESSEL UNDER STIPULATED JUDGMENT; REQUEST FOR AN ORDER TO TRANSFER OWNERSHIP OF VESSEL TO PLAINTIFF IN INTERVENTION, SANKO BUSSAN CO., LTD.; EXHIBITS A-C on the following counsel of record:

Steven A. Zamsky, Esq.  
Zamsky Law Firm  
Suite 805, GCIC Building  
414 West Soledad Avenue  
Hagåtña, Guam 96910


and

Michael J. Berman, Esq.  
Berman O'Connor & Mann & Shklov  
Suite 503, Bank of Guam Building  
111 Chalan Santo Papa  
Hagåtña, Guam 96910

I will also serve by U.S. postal service on Mr. Toshihiko Ikema, Owner of Kana-Maruru #1, 110 Aza Maesatozoe, Irabu-cho, Miyakojima, Okinawa.

DATED: Hagåtña, Guam, November 7, 2005.

CARLSMITH BALL LLP

  
\_\_\_\_\_  
DAVID LEDGER  
Attorneys for Defendant  
Sanko Bussan Co., Ltd.

**DECLARATION OF SERVICE**

I, DAVID LEDGER, pursuant to 28 U.S.C. Section 1746, hereby declare under penalty of perjury of the laws of the United States that on November 17, 2005, I served, via hand delivery, a copy of the above:

**Proof of Actual Service Of Notice Of Repossession Of Vessel And Request For An Order Transferring Ownership; Exhibit A**

on the following counsel of record:


Steven A. Zamsky, Esq.  
Zamsky Law Firm  
Suite 805, GCIC Building  
414 West Soledad Avenue  
Hagåtña, Guam 96910

and

Daniel J. Berman, Esq.  
Berman O'Connor & Mann & Shklov  
Suite 503, Bank of Guam Building  
111 Chalan Santo Papa  
Hagåtña, Guam 96910

I, DAVID LEDGER, pursuant to 28 U.S.C. Section 1746, hereby further declare under penalty of perjury of the laws of the United States that on November 17, 2005, I served, via first class certified mail and DHL courier a copy of the above pleading on Toshihiko Ikema at the following address: 110 Aza Maesatozoe, Irabu-cho, Miyakojima, Okinawa.

Executed at Hagåtña, Guam on November 17, 2005.

  
\_\_\_\_\_  
DAVID LEDGER